From: Ken Graham
To: 'microsoft.atr(a)usdoj.gov'
Date: 1/25/02 3:33pm
Subject: Microsoft Settlement

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To Whom it May Concern:

Regarding section III H 3, a copy of which is pasted here:

... Microsoft Shall:

...

3.Ensure that a Windows Operating System Product does not (a) automatically alter an OEM's configuration of icons, shortcuts or menu entries installed or displayed by the OEM pursuant to Section III.C of this Final Judgment without first seeking confirmation from the user and (b) seek such confirmation from the end user for an automatic (as opposed to user-initiated) alteration of the OEM's configuration until 14 days after the initial boot up of a new Personal Computer. Microsoft shall not alter the manner in which a Windows Operating System Product automatically alters an OEM's configuration of icons, shortcuts or menu entries other than in a new version of a Windows Operating System Product.

Please be advised that the above language, specifically: Microsoft shall "Ensure that a Windows Operating System Product does not ... (b) seek such confirmation from the end user for an automatic ... alteration of the OEM's configuration until 14 days after the initial boot up of a new Personal Computer.", does not constrain the length of time for such a reminder, thus allowing Microsoft to indefinitely issue such a dialog until such time as the user caves in, and selects such Microsoft Product or offering.

Is it not the job of the DOJ to redress the harm done by Microsoft? This agreement clearly does not do so.

All this language does is delay their existing behavior. It does not fundamentally alter any of the existing Microsoft practices which fall within the scope of the aforementioned section, and fail to fundamentally redress the egregious behavior for which Microsoft has been repeatedly found guilty.

Please be advised that under no circumstances, should any installation of any product from any vendor ever modify any configuration of any component without user confirmation when said component is not directly and obviously under the pervue and user control of said product. Please consider the consequences of allowing any action to the contrary.

That the statement, "the manner in which a Windows Operating System Product automatically alters an OEM's configuration of icons, shortcuts or menu entries" even exists in this agreement is evidence of the DOJ blessing existing Microsoft behavior. It is one thing for AOL to behave like this within their own product. This is an annoying and arrogant behavior on the part of AOL. Since AOL does not allow any third party to interfere with their dysfunctionality, they are perfectly permitted to commit this cardinal sin without fear of judicial review. Additionally, were language like the above employed, they could still behave in such an egregious manner, for what they change is still under their control. However, when Microsoft does this same behavior it is different. This is an uncontested fact(except by Microsoft) who only wants complete free reign. Microsoft has blatantly set out to thwart and circumvent all attempts to prevent it from controlling all aspects, like AOL, and unfortunately, it looks like the DOJ is beFUDdled.(FUD=Fear Uncertainty Doubt/See Sun vs Microsoft). When I install a new version of any product, on any platform, there should never, ever, be an automatic reconfiguration of any product not clearly and obviously "owned" and affected, by the vendor and application, being installed. Seeing as installing a "new version of a Windows Operating System Product", is clearly unavoidable, they should not be allowed to infect the data and configuration space of vendors and products, not clearly under user control within the application(s) being installed.

A clear case of this, is the look and feel of MS Windows Explorer and MS Outlook(client).

Their behavior is controlled and configured within Internet Explorer. The poor computer user who is not well acquainted with the insidious behavior of Microsoft would be at a total loss to explain this seemingly terrible design and implementation, much less discover how to correct the problem. Upon investigation inside the Microsoft Knowledge Base, one will encounter the phrase "As Designed", which literally means, that this behavior is intended. It is not a bug. They intended to show that Internet Explorer is required, when clearly(to those who are informed and of sound mind and body) it is not. A cursory examination of the UI's used by Outlook will clearly show that not only is Internet Explorer not fundamental to the OS, but that it was adhoc'ed onto existing applications, in a poorly implemented retrofit, so as to show to the uninformed exactly how required IE really was, when to any sane individual it was clearly not the case.

Regarding:

"Notwithstanding the foregoing Section III.H.2, the Windows Operating System Product may invoke a

Microsoft Middleware Product in any instance in which: ", subsections 1, and 2, of same.

With the issues of securing an operating system, from the point of view of the Microsoft Mindset, as blessed within the guidelines of this agreement, it seems that to abrogate all provisions, requires only the creation of an "OS"(quotes added for emphasis/humor) which has "security", (read as attempt to provide illusion of security). Please refer to the patent granted to Microsoft, by the uspto, called "Digital Rights Management Operating System"(application 227561). Under the guise of security, and NDA(non disclosure agreement), the ability of the public to know what Microsoft is doing will be non-existent. As a primary consequence, no complaint can be filed. Given that congress(lower case to show proper respect) has caved in to corporate conglomerates with the DMCA, then any attempt to discover how Microsoft has broken this agreement will also be illegal. Since this agreement relies on complaint driven inquiry to assess Microsoft compliance, the result will be again for Microsoft to have outwitted and clearly trivialized the DOJ and this court.

You need to understand. Microsoft has no intention of keeping this agreement, any more than they have kept prior agreements. This is not an inappropriate attribution. There exists mountains of evidence to support such an opinion and to act without regard to this evidence is tantamount to negligence and Dereliction of Duty.

This agreement is naive, and shortsighted. It is consistent with a desire by the FBI to abridge the rights of citizens to privacy, without judicial review or constraint. This can only be truly accomplished in a closed system, like Windows, and not via the Open Source community. That this opinion is warranted can easily be attested by such things as "carnivore", and "magic lantern", as reported by Reuters, and confirmed by the FBI.

It is the opinion of this citizen, that the DOJ wants Microsoft in place, with its monopoly intact, so as to place their "carnivore"/"magic lantern" on every PC. Everybody knows(that is to say, that both vendors and consumers recognize the need for protection from what Microsoft allows, which is not allowed by default, if not impossible, everywhere else) that Microsoft products are the worlds worst culprits for replicating virii(multiple of virus), and without the possibility of user intervention, thus behaving "as designed"(common phrase Microsoft uses to describe what would normally be called

an egregious break of security or serious design/implementation flaw).

The protections stated in this agreement do not include the Open Source community. The level of attention and the number of individuals of common intelligence involved in this case suggest that this cannot be an oversite. How is this possible given that Microsoft only considers the Open Source Community and Linux to be a threat? This evidence supports opinions already expressed above regarding the intentions of the DOJ.

The DOJ, in order to create the appearance of Justice, allows for: V B, "In any enforcement proceeding in which the Court has found that Microsoft has engaged in a pattern of willful and systematic violations, ...", which is made moot by provision: IV 4 D 4 d, "No work product, findings or recommendations by the TC may be admitted in any enforcement proceeding before the Court for any purpose, and no member of the TC shall testify by deposition, in court or before any other tribunal regarding any matter related to this Final Judgment." A provision, which by declaration, prohibits testimony relevant to the former by those who are most in a position to testify to "a pattern of willful and systematic violations". I was under the impression that it was the intent of the DOJ to effect a change in behavior at Microsoft, and not just the appearance of doing so.

I see no method outlined to address situations where legitimate differences of opinion occur. It is not difficult to foresee Microsoft testing the boundaries of this agreement, and getting, via 'case law', precedents that result in another 1995 pointless agreement. Especially as it is nothing but SOP(standard operating procedure).

Were I asked to categorize what would be observed in this agreement by any person of sound mind and body, it would be a persistent attempt to appear to constrain Microsoft, without actually doing so. With rare exception, Microsoft is not substantively constrained. In fact, with recent announcements, and the desire of the FBI in concert with the Administration to abridge constitutional rights("carnivore" and "magic lantern"), it would seem inevitable that justice will in this instance, again, not prevail.

What I do humbly suggest to this court, which is within the scope and timbre of the existing agreement, is that all complaints be made public via a non DOJ and non Microsoft website(evidence suggests the DOJ is not 'clean', and Microsoft we already

know cannot be trusted). As each complaint is addressed and resolved, the originating complaint should be annotated as to status and resolution, so that the marketplace, by being fully informed, may execute justice.

Sincerely,

Ken Graham